

ENTERED

October 17, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

CORNELL SIMON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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CIVIL ACTION NO. 2:22-CV-00137

ORDER ADOPTING MEMORANDUM & RECOMMENDATION

Before the Court is Magistrate Judge Jason Libby's Memorandum and Recommendation ("M&R"). (D.E. 9). The M&R recommends that the Court dismiss Petitioner Cornell Simon's petition, (D.E. 1), because the Court does not have jurisdiction to consider Petitioner's claim. (D.E. 9, p. 5). The M&R also recommends "that Petitioner's cause of action not be characterized as [a] motion to vacate or set aside his sentence brought pursuant to 28 U.S.C. § 2255 because Petitioner has previously filed a § 2255 motion in the correct jurisdiction." *Id.*

The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); General Order No. 2002-13. No objection has been filed. When no timely objection has been filed, the district court need only determine whether the Magistrate Judge's M&R is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam); *Badaiki v. Schlumberger Holdings Corp.*, 512 F. Supp. 3d 741, 743–44 (S.D. Tex. 2021) (Eskridge, J.).

Having reviewed the proposed findings and conclusions of the Magistrate Judge, the filings of the parties, the record, and the applicable law, and finding that the M&R is not clearly erroneous or contrary to law, the Court **ADOPTS** the M&R's recommendation that Petitioner's claim be

dismissed for lack of jurisdiction. (D.E. 9). The Court also **ADOPTS** the M&R's recommendation that Petitioner's cause of action not be characterized as a motion to vacate or set aside his sentence brought pursuant to 28 U.S.C. § 2255. *Id.* Accordingly, the Court **ORDERS** that Plaintiff's petition be **DISMISSED**. (D.E. 1). The Clerk of Court is **DIRECTED** to close this case.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'DM', is written over a horizontal line.

DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Dated: Corpus Christi, Texas
October 14th, 2022